Nos. 17-1717 & 18-18

In the Supreme Court of the United States

THE AMERICAN LEGION, *et al.*,
Petitioners,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION,
Petitioner,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

ON PETITIONS FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA, 27 OTHER STATES, AND THE GOVERNOR OF KENTUCKY IN SUPPORT OF PETITIONERS

PATRICK MORRISEY
Attorney General
OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

LINDSAY S. SEE
Solicitor General
Counsel of Record

GORDON L. MOWEN, II
Assistant Attorney General

Counsel for Amicus Curiae State of West Virginia
[additional counsel listed at end]

QUESTION PRESENTED

Whether the Establishment Clause requires the alteration or removal of a 93-year-old memorial to American service members who died in World War I solely because the memorial bears the shape of a cross.

TABLE OF CONTENTS

Page

QUESTION PRESENTED 1

INTERESTS OF *AMICI CURIAE* AND SUMMARY OF THE ARGUMENT 1

REASONS FOR GRANTING THE PETITION 3

I. REVIEW IS NECESSARY TO RESOLVE SIGNIFICANT CONFUSION AROUND THE ESTABLISHMENT CLAUSE'S MEANING AND PURPOSE 3

II. THE WIDE-REACHING IMPLICATIONS OF THIS CASE—WHICH QUESTIONS THE CONSTITUTIONALITY OF COUNTLESS WAR MEMORIALS—WARRANT THIS COURT'S REVIEW 12

CONCLUSION 28

TABLE OF AUTHORITIES

Page(s)

Cases

ACLU v. Mercer Cty.,
432 F.3d 624 (6th Cir. 2005) 4

Barnes v. Cavazos,
966 F.2d 1056 (6th Cir. 1992) 9

Card v. City of Everett,
520 F.3d 1009 (9th Cir. 2008) 8

Children's Healthcare is a Legal Duty, Inc. v. Min De Parle,
212 F.3d 1084 (8th Cir. 2000) 6

Doe ex rel. Doe v. Elmbrook Sch. Dist.,
687 F.3d 840 (7th Cir. 2012) 4, 9

Green v. Haskell Cty. Bd. of Comm'rs,
568 F.3d 784 (10th Cir. 2009). 8

Jones v. Hamilton Cty.,
891 F. Supp. 2d 870 (E.D. Tenn. 2012) 6

Lamb's Chapel v. Center Moriches School Dist.,
508 U.S. 384 (1993) 6

Lee v. Weisman,
505 U.S. 577 (1992) 4

Lemon v. Kurtzman,
403 U.S. 602 (1971) 5, 6, 7

Lund v. Rowan Cty.,
863 F.3d 268 (4th Cir. 2017) 6

Lynch v. Donnelly,
465 U.S. 668 (1984) 4

TABLE OF AUTHORITIES
(continued)

Page(s)

McCreary Cty. v. ACLU,
545 U.S. 844 (2005) 8

Mount Soledad Mem'l Ass'n v. Trunk,
567 U.S. 944 (2012) 5

Murray v. City of Austin,
947 F.2d 147 (5th Cir. 1991) 6

Red River Freethinkers v. City of Fargo,
764 F.3d 948 (8th Cir. 2014) 8

Rosenberger v. Rector & Visitors of Univ. of Virginia,
18 F.3d 269 (4th Cir. 1994) 6

Rowan Cty. v. Lund,
138 S. Ct. 2564 (2018) 4

Salazar v. Buono,
559 U.S. 700 (2010) 19, 21, 23

Santa Fe Indep. Sch. Dis. v. Doe,
530 U.S. 290 (2000) 6

Skoros v. City of New York,
437 F.3d 1 (2d Cir. 2006) 6, 9

Smith v. Jefferson Cty. Bd. of Sch. Comm'rs,
788 F.3d 580 (6th Cir. 2015) 6

Steele v. Indus. Dev. Bd. of Metro. Gov't Nashville,
301 F.3d 401 (6th Cir. 2002) 6

Town of Greece, N.Y. v. Galloway,
134 S. Ct. 1811 (2014) 10, 12

Trunk v. City of San Diego,
629 F.3d 1099 (9th Cir. 2011) 8

TABLE OF AUTHORITIES
(continued)

Page(s)

Utah Highway Patrol Ass'n v. Am. Atheists, Inc.,
565 U.S. 994 (2011) 5

Van Orden v. Perry,
545 U.S. 677 (2005) 7, 8, 9, 10

Wallace v. Jaffree,
472 U.S. 38 (1985) 5, 7

Weisman v. Lee,
908 F.2d 1090 (1st Cir. 1990) 6

Constitutional Provision

U.S. Const. amend. I 3

Statues

10 U.S.C. § 3742 18

10 U.S.C. § 3749 18

10 U.S.C. § 6242 18

10 U.S.C. § 8742 18

Consolidated Appropriations Act, 2005,
Pub. L. No. 108-447, 118 Stat. 2809 (2004) 25

Other Authorities

Abraham Lincoln Online,
http://www.abrahamlincolnonline.org 14

TABLE OF AUTHORITIES
(continued)

Page(s)

Al Whitaker, *Priceville Honors Veterans, Dedicates New Memorial Park*, WHNT News (Nov. 12, 2012), http://www.wentzvillemo.org 27

Website of American Battle Monuments Comm'n, https://www.abmc.gov 20, 21

Arlington Nat'l Cemetery (military website), http://www.arlingtoncemetery.mil 15, 21, 24

Arlington Nat'l Cemetery (non-government website), http://arlingtoncemetery.net 21, 24

Ben Rappaport, *How Many American Troops Are Buried In Foreign Lands?*, NBCNews.com (May 30, 2016) 19

Bloomington Grove, Texas, Community Information Portal, http://bloominggrovetx 17

Website of Columbia, South Carolina, http://www.columbiasouthcarolina.com 17

George L. Mosse, FALLEN SOLDIERS: RESHAPING THE MEMORY OF THE WORLD WARS (1990) 24

History of Beckley and Raleigh County, http://jeff560.tripod.com/veterans.html 16

Website of the State of Indiana https://www.in.gov 16

John Ruler & Emma Thomson, WORLD WAR I BATTLEFIELDS: A TRAVEL GUIDE TO THE WESTERN FRONT (2d ed. 2018) 20

TABLE OF AUTHORITIES
(continued)

Page(s)

John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 371 (1996)...6

Kathleen Golden, *The Battle Cross*, THE SMITHSONIAN, (May 21, 2015) 27

Lori Tobias, *Coos Bay Vietnam memorial stirs up strong feelings and a bombing over Christian symbolism*, The Oregonian (Aug. 31, 2013) 24

Maryland Department of Planning, https://mht.maryland.gov.....22

Maryland Historical Trust Inventory, TOWSON WAYSIDE CROSS (Feb. 1997).....22

Michael H. Koby & Ash Jain, *Memorializing Our Nation's Heroes: A Legislative Proposal to Amend the Commemorative Works Act*, J.L. & POL. 99 (2001) 13

Michael Kammen, MYSTIC CHORDS OF MEMORY: THE TRANSFORMATION OF TRADITION IN AMERICAN CULTURE (1991) 13, 14

Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115 (1992).....6

Nat'l Park Serv., https://www.nps.gov 14, 19

Official Website of the New York City Dep't of Parks & Recreation, http://www.nycgovparks.org...14, 23

Ossuaire De Douaumont, *Galerier photos*, http://www.verdun-douaumont.com 21

TABLE OF AUTHORITIES
(continued)

Page(s)

Philadelphia Pub. Art,
http://www.philart.net.....23

Website of the Battle of Gettysburg,
http://gettysburg.stonesentinels.com.....14

The Historical Marker Database,
http://www.hmdb.org.....16, 27

Website of the Nat'l D-Day Memorial,
https://www.dday.org 27

The Nat'l War Memorial Registry,
http://www.nationalwarmemorialregistry.com
.....23, 25, 26, 27

Remembering the Fallen,
https://www.ww1cemeteries.com 19

U.S. Dep't of Veterans Affairs,
https://m.va.gov 13, 19, 22, 25

Waymarking.com,
http://www.waymarking.com 15, 19, 22, 25, 27

Website of Wentzville, Missouri,
http://www.wentzvillemo.org 17

INTERESTS OF *AMICI CURIAE* [1] AND SUMMARY OF THE ARGUMENT

Over the years, this Court and its members have articulated a variety of tests to determine when state action runs afoul of the First Amendment's prohibition against making any law "respecting the establishment of religion." These competing interpretations and fractured opinions have led to frequent divisions in the lower courts—and substantial confusion over the metes and bounds of the Establishment Clause.

This case is an egregious example of the consequences from this uncertain state of the law. The court below declared unconstitutional a war memorial built nearly a century ago in Maryland to honor 49 local men who died overseas in World War I. The memorial was built for the secular purpose of honoring these soldiers, contains secular imagery and allusions, and has since been surrounded by other memorials to the fallen. Yet because this memorial was built in the shape of a cross, the court below determined that the Constitution requires its destruction or substantial alteration.

Amici curiae—the States of West Virginia, Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma,

---

[1] Pursuant to Supreme Court Rule 37.2(a), *amici* timely notified counsel of record of their intent to file an *amicus* brief in support of Petitioners and received consent from all parties.

Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, and Virginia—recognize the importance of remembering and commemorating the men and women who serve our country and die in its defense. They likewise have a profound interest in safeguarding war memorials that have stood within their borders for decades—or longer. *Amici* also have an interest in clarity about the Establishment Clause's parameters in challenges to monuments like these.

This brief first underscores the unworkable state of current Establishment Clause jurisprudence and the implications of that confusion for public memorials and similar monuments incorporating religious imagery or allusions.

The three-factor *Lemon* test has only added to this disarray—as many lowers courts, scholars, and members of this Court have noted—particularly in the context of challenges to passive monuments. Thirteen years ago, five Justices recognized that *Lemon* is unsuited to these challenges, and that the correct test must account for context, history, and the Establishment Clause's purpose. *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) (plurality op.); *id.* at 699-700 (Breyer, J., concurring). Yet despite what should have been clear guidance, lower courts remain divided in *Van Orden*'s wake. This Court's intervention is necessary to clarify this important area of First Amendment law.

And this is the right case to do so. The court below forced *Van Orden*'s historical and purpose-driven

inquiry into the failed *Lemon* framework, then reached the indefensible result of declaring a near-century old war memorial unconstitutional. This case will allow the Court to consider fully the fact-specific elements of the correct inquiry in challenges like these.

Second, this brief highlights the extensive use of religious imagery—and crosses specifically—in war and veterans memorials as part of a secular, civic effort to honor our armed forces. Hundreds of crosses adorn war and veterans memorials nationwide, as well as many other religious symbols used to commemorate and honor fallen soldiers. Because religious imagery has been widely used for this civic purpose from the founding of this nation up to the present, the implications of the Fourth Circuit's decision are immense. Yet properly understood, these monuments are fully constitutional, and indeed integral threads woven into our history and public consciousness.

REASONS FOR GRANTING THE PETITION

I. Review Is Necessary To Resolve Significant Confusion Around The Establishment Clause's Meaning And Purpose.

A. The state of Establishment Clause jurisprudence is in shambles. Just ten words long—"Congress shall make no law respecting an establishment of religion," U.S. Const. amend. I—for decades the Establishment Clause has been marked by competing frameworks about its original meaning and purpose. On one hand, the Establishment

Clause's goal has been described as "prevent[ing], as far as possible, the intrusion of either the church or the state into the precincts of the other," *Lynch v. Donnelly*, 465 U.S. 668, 672 (1984), and "guarantee[ing] that government may not coerce anyone to support or participate in religion . . . [or] act in a way which establishes a state religion or religious faith," *Lee v. Weisman*, 505 U.S. 577, 587 (1992). Yet this Court has also emphasized that "total separation is not possible," and that, to the contrary, the Clause "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch*, 465 U.S. at 672-73.

Division and confusion around the Establishment Clause have only grown in recent decades, with courts nationwide calling for clarity. The Sixth Circuit, for example, has bemoaned that "we remain in Establishment Clause purgatory." *ACLU v. Mercer Cty.*, 432 F.3d 624, 636 (6th Cir. 2005). And a judge on the Seventh Circuit described modern Establishment Clause case law as "formless, unanchored, subjective." *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 872 (7th Cir. 2012) (en banc) (Posner, J., dissenting).

This June, Justices Thomas and Gorsuch underscored these same weaknesses: "Establishment Clause jurisprudence is in disarray"—and in sore need of this Court's review. *Rowan Cty. v. Lund*, 138 S. Ct. 2564 (2018) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari). Their lament is the latest in a growing chorus of current and former members of the Court who have serious concerns

about the moving target of modern Establishment Clause jurisprudence. *See, e.g.*, *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944 (2012) (Alito, J., respecting denial of certiorari) ("Establishment Clause jurisprudence is undoubtedly in need of clarity."); *Utah Highway Patrol Ass'n v. Am. Atheists, Inc.*, 565 U.S. 994 (2011) (Thomas, J., dissenting from denial of certiorari) ("It is difficult to imagine an area of the law more in need of clarity"); *Wallace v. Jaffree*, 472 U.S. 38, 91 (1985) (White, J., dissenting) (suggesting the Court revisit Establishment Clause case law); *id.* at 92 (Rehnquist, J., dissenting) (criticizing current state of Establishment Clause jurisprudence).

B. This fractured interpretative framework traces to some extent to the middle of the twentieth century. *Wallace*, 472 U.S. at 91-92 (Rehnquist, J., dissenting). The morass noticeably thickened, however, in the wake of the three-factor test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

To pass muster under *Lemon*, a challenged law or government practice must satisfy three requirements: It must have a secular legislative purpose, its principal or primary effect must neither advance nor inhibit religion, and it must not foster excessive government entanglement with religion. *Lemon*, 403 U.S. at 612-13. Lower courts have applied this "*Lemon* test" over the years (in various degrees) to a

variety of constitutional challenges.[2] Yet despite its resiliency, *Lemon*'s reception has been anything but sweet. It has engendered significant judicial and scholarly critique,[3] including from members of this Court. *See, e.g.*, *Santa Fe Indep. Sch. Dis. v. Doe*, 530 U.S. 290, 319 (2000) ("We have even gone so far as to state that [*Lemon*] has never been binding on us.") (Rehnquist, C.J., dissenting, joined by Scalia, J. and Thomas, J.); *Lamb's Chapel v. Center Moriches School Dist.*, 508 U.S. 384, 396-400 (1993) (Scalia, J., joined

---

[2] *See, e.g.*, *Lund v. Rowan Cty.*, 863 F.3d 268 (4th Cir. 2017) (legislative prayer); *Skoros v. City of New York*, 437 F.3d 1 (2d Cir. 2006) (religious holiday display); *Steele v. Indus. Dev. Bd. of Metro. Gov't Nashville*, 301 F.3d 401 (6th Cir. 2002) (public bonds benefiting religious university); *Children's Healthcare Is a Legal Duty, Inc. v. Min De Parle*, 212 F.3d 1084 (8th Cir. 2000) (public funding for "religious nonmedical health care institutions"); *Murray v. City of Austin*, 947 F.2d 147 (5th Cir. 1991) (cross on city insignia); *Weisman v. Lee*, 908 F.2d 1090 (1st Cir. 1990), *aff'd*, 505 U.S. 577 (1992) (prayer at public school graduations).

[3] *See, e.g.*, *Smith v. Jefferson Cty. Bd. of Sch. Comm'rs*, 788 F.3d 580, 599 (6th Cir. 2015) ("Often it is not entirely clear precisely what [Establishment Clause] test the Court applies, or how the Court's approach should be characterized."); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 18 F.3d 269, 282 n.30 (4th Cir. 1994), *rev'd*, 515 U.S. 819 (1995) ("[*Lemon* has] aroused considerable controversy . . . even to the point of frequent suggestion in nonmajority opinions that *Lemon* be abandoned."); *Jones v. Hamilton Cty.*, 891 F. Supp. 2d 870, 878 (E.D. Tenn. 2012) (noting "lack of guidance" about *Lemon*'s applicability in Establishment Clause jurisprudence); John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 371, 425 (1996); Michael W. McConnell, *Religious Freedom at A Crossroads*, 59 U. CHI. L. REV. 115, 128 (1992).

by Thomas, J., concurring in judgment) ("*Lemon* stalks our Establishment Clause jurisprudence" "[l]ike some ghoul in a late-night horror movie."); *Wallace*, 472 U.S. at 110 (Rehnquist, J., dissenting) (rejecting *Lemon* test as ungrounded in "the history of the First Amendment"); *id.* at 68-69 (O'Connor, J., concurring) (asking the Court to reexamine and refine *Lemon*). Indeed, over a twenty-year period this Court declined to apply *Lemon* in Establishment Clause cases "[n]o fewer than seven times." *Mercer Cty.*, 432 F.3d at 635 (citations omitted).

This Court's decision in *Van Orden v. Perry*, 545 U.S. 677 (2005), provided an opportunity to reject *Lemon*—and clarify the proper Establishment Clause standard—in the context of challenges to monuments containing religious imagery. And (rightly understood) it should have done just that: The plurality opinion declared that, whatever *Lemon*'s fate "in the larger scheme of Establishment Clause jurisprudence," it is "not useful" in passive monument cases. *Id.* at 686 (plurality op.). Instead, the plurality's analysis was "driven both by the nature of the monument and by our Nation's history." *Id.* Justice Breyer's concurrence added a fifth vote for this approach. He also declined to apply *Lemon*, explaining there is "no single mechanical formula that can accurately draw the constitutional line in every case." *Id.* at 699-700 (Breyer, J., concurring). In its place he advocated a "fact-intensive" assessment, considering a monument's "context, history, and the Establishment Clause's purpose." *Id.*

Under either the plurality's or Justice Breyer's framework, the lesson from *Van Orden* is that *Lemon* does not apply to passive monument cases. The Constitution does not require States "to purge from the public sphere" any reference to religion. *Van Orden*, 545 U.S. at 699 (Breyer, J., concurring). Rather, a robust constitutional inquiry considers the monument's history and context, our country's traditions, and the Establishment Clause's goals.

Thirteen years, however, have shown that *Van Orden* did not clear the waters. For one thing, the Court decided a different passive monument case the same day as *Van Orden*, where a majority of the Court did apply *Lemon*. *McCreary Cty. v. ACLU*, 545 U.S. 844 (2005). And without a unified approach from this Court, lower courts remain divided too.

For example, the Tenth Circuit applies Lemon in passive monument challenges. *See Green v. Haskell Cty. Bd. of Comm'rs*, 568 F.3d 784, 798 (10th Cir. 2009). The Eighth Circuit expressly does not. *Red River Freethinkers v. City of Fargo*, 764 F.3d 948, 949 (8th Cir. 2014). Below, the Fourth Circuit applied *Lemon* primarily, and tried to shoehorn principles from *Van Orden* into its rubric. Comm'n's App. 23a, 26a. The Ninth Circuit has also at times used a hybrid-test, *see Trunk v. City of San Diego*, 629 F.3d 1099, 1107 (9th Cir. 2011), or simply refused to use *Lemon* at all, *see Card v. City of Everett*, 520 F.3d 1009, 1016 (9th Cir. 2008).

Indeed, there is so much confusion in this area that even accounting for it all is hard. *E.g.*, Am.

Legion Pet. 22 (noting "several distinct splits" among courts, particularly regarding passive monuments). Courts have been asking for clarity throughout the past three decades. *See, e.g.*, *Skoros*, 437 F.3d at 13 (recognizing difficulty deciding public display cases in light of "frequently splintered Supreme Court decisions" and separate opinions that "have rarely agreed—in either analysis or outcome"); *Barnes v. Cavazos*, 966 F.2d 1056, 1063 (6th Cir. 1992) ("[*Lemon*] has received criticism from virtually every corner and we add our voices to those who profess confusion and frustration with *Lemon*'s analytical framework."); *Elmbrook Sch. Dist.*, 687 F.3d at 869 (Easterbrook, C.J., dissenting).

This is the right case to right the course.

C. The decision below offers an ideal vehicle to resolve the confusion plaguing the Establishment Clause. It is an egregious example of the consequences of forcing the square peg of a robust inquiry about a monument's history and purpose into *Lemon*'s round hole. It also has a well-developed record from which this Court can articulate the standards that *should* govern.

First, whatever the correct method to resolve challenges to monuments containing religious imagery, the approach of the court below is not it. The majority made the *Lemon* test its guiding light—despite skepticism from *Van Orden*'s plurality *and* concurrence about *Lemon*'s usefulness in passive monument cases. Indeed, the Fourth Circuit adopted this course because it had "consistently applied

Lemon in religious display cases," Comm'n's App. 17a, yet the precedent on which it relied *preceded Van Orden*, *id.* Worse still, rather than applying *Van Orden*'s history and purpose inquiry, it relegated the case to merely one of several used to assess *Lemon*'s second prong, *id.* at 23a, 26a. This approach cannot withstand review under either *Van Orden* or this Court's more recent jurisprudence—which similarly commands that the Clause "must be interpreted by reference to historical practice and understandings." *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1818 (2014) (quotations omitted).

Stumbling at the outset by applying the wrong test, it is hardly surprising that the court below reached an indefensible outcome. The court all-but ignored the Bladensburg monument's secular context and long history, and held that its continued existence "violates the Establishment Clause." Comm'n's App. 31a. Without this Court's intervention, Maryland will be required to tear down (or at least, as the author of the majority opinion suggested, cut off the arms) a monument built almost 100 years ago by the American Legion and a group of mothers as a substitute gravestone for their soldiers who died overseas in World War I. Am. Legion Pet. 3, 5-6. The Establishment Clause does not require this result.

Second, this case provides a robust factual record from which the Court can consider fully the factors that determine when a passive monument does and does not offend the Constitution. To be sure, the cross shape of the memorial—the product of decisions made nearly a century ago by members of the community

where it stands—has obvious religious connotations. But the record is also clear that its original purpose was not religious devotion, but to honor 49 local soldiers who died in the war. Am. Legion Pet. 5-6; *cf. Trunk*, 629 F.3d at 1101 (holding cross monument violated Establishment Clause where primary objective was "to create a park worthy of this magnificent view, and worthy to be a setting for the symbol of Christianity"). Similarly, the memorial has been used throughout its history as the site for events on secular holidays commemorating fallen soldiers and veterans, like Memorial Day and Veterans Day. Am. Legion Pet. at 7. Particularly when considered in light of the cultural context when it was built—and indeed, still today—that viewed crosses as a symbol of death and memory, *see infra* Part II, the Establishment Clause demands giving heavy weight to the monument's secular purpose and use.

The Bladensburg cross is also an example of a monument with both religious *and* secular elements. It is inscribed with the words "valor, endurance, courage, and devotion," and contains a large plaque listing the names of those it was built to honor. Am. Legion Pet. 5-6. Tellingly, it has also been surrounded over the years by other commemorative monuments—a Pearl Harbor Memorial, Battle of Bladensburg Memorial, September 11 Memorial Garden, and others. *Id.* at 7-8. None of those monuments use religious imagery, *id.*, further confirming that the local community recognizes the World War I monument is and has always been commemorative, not religious.

Finally, the monument's age must be weighed. Any standard, like the one employed below, "that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent." *Town of Greece*, 134 S. Ct. at 1819 (citing *Van Orden*, 545 U.S. at 702-04). Ninety-three years counsels in favor of constitutionality.

These and other elements make clear that memorials do not offend the Constitution simply by incorporating religious elements. War memorials have historically coopted religious imagery for the secular purpose of remembering the men and women who fight and die for our country. The time is right to fix the jurisprudential mess surrounding Establishment Clause questions like these, and this is the right case to provide guidance for those to come.

II. The Wide-Reaching Implications Of This Case—Which Questions The Constitutionality Of Countless War Memorials—Warrant This Court's Review.

The decision below declared unconstitutional a near century-old memorial built to honor the memory of 49 soldiers who died in World War I. Comm'n's App. 31a. As explained above and in the petitions, the panel's decision is wrong and reflects an incorrect understanding of the Establishment Clause's original meaning and purpose. Review is also necessary because of its significant and far-reaching consequences. Across the country, hundreds of veterans memorials incorporate religious imagery

into the structures commemorating the dead, and crosses are a common marker in this landscape. As Judge Neimeyer warned in dissent from denial of rehearing below, the panel's decision not only violates this Court's precedent, but "also needlessly puts at risk hundreds of monuments with similar symbols standing on public grounds across the country." Comm'n's App. 101a. This Court should grant the petitions to ensure a strong constitutional footing for the nation's countless memorials to our fallen service members.

A. There are at least 242 national and state cemeteries honoring U.S. veterans,[4] and countless more memorials on public lands nationwide—from Arlington National Cemetery and Civil War battlefields, to state capitols and town squares. War memorials are historic touchstones. They tie the past to the present, serving as a place of healing, a space to thank and honor the dead, and, for future generations, "a repository for a collective social and cultural memory." Michael H. Koby & Ash Jain, *Memorializing Our Nation's Heroes: A Legislative Proposal to Amend the Commemorative Works Act*, J.L. & POL. 99, 134 (2001) (citations omitted). Indeed, the sheer publicness of many memorials—often built at local courthouses and village greens instead of in cemeteries—tracks an urge to keep those fallen at the forefront of our collective consciousness. *See* Michael Kammen, MYSTIC CHORDS OF MEMORY:

---

[4] *See* U.S. Dep't of Veterans Affairs, *National Cemetery Administration*, https://m.va.gov/findCemetery.cfm (last visited July 27, 2018).

THE TRANSFORMATION OF TRADITION IN AMERICAN CULTURE 117 (1991).

From America's earliest days, these memorials have often used religious architecture and allusions, visual aids inspiring respect for those who died for our country's freedoms and ideals. In New York City, for example, the monument to soldiers killed in the Battle of Long Island during the Revolutionary War is etched with Washington's words on the eve of battle: "My God, What Brave Fellows I Must This Day Lose!"[5] In a similar mold, post-Civil War monuments were often emblazoned with the famous passage from Lincoln's Gettysburg Address—"that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth."[6] These words are found not only at sites like the Lincoln Memorial[7] and the memorial on the Gettysburg battlefield,[8] but on State capitol grounds,

---

[5] Official Website of the New York City Dep't of Parks & Recreation, *Prospect Park*, http://www.nycgovparks.org/parks/prospect-park/highlights/19641.

[6] Abraham Lincoln Online, *The Gettysburg Address*, Speeches & Writings, http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm.

[7] Nat'l Park Serv., *Lincoln Memorial Inscriptions*, https://www.nps.gov/linc/learn/historyculture/Inscriptions.htm.

[8] Stone Sentinels, *Lincoln's Gettysburg Address Memorial*, The Battle of Gettysburg, http://gettysburg.stonesentinels.com/other-monuments/lincolns-gettysburg-address-memorial/.

like West Virginia's.[9] So too for memorials remembering those lost in the Spanish-American War. At Arlington National Cemetery, for example, one monument is topped with a cross,[10] and another reads, "To the glory of God and in grateful remembrance of the men and women of the Armed Forces who in this century gave their lives for our country that freedom might live."[11]

Monuments built in the twentieth century to honor World War I's soldiers—like the Bladensburg memorial—also made frequent use of religious imagery for the secular purpose of remembering those who defended our country. For example, the perpetually guarded Tomb of the Unknown Soldier at Arlington National Cemetery is inscribed, "Here Rests In Honored Glory An American Soldier Known But To God."[12] And in Indianapolis, the base of a 100-foot World War I obelisk contains mammoth stone bas-

---

[9] Waymarking.com, *West Virginia Civil War Memorial-Charleston*, http://www.waymarking.com/waymarks/WM8FE1_West_Virginia_Civil_War_Memorial_Charleston_West_Virginia.

[10] Arlington Nat'l Cemetery, *Spanish-American War Nurses Monument*, http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Spanish-American-War-Nurses-Monument.

[11] Arlington Nat'l Cemetery, *Spanish-American War Monument*, https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Spanish-American-War-Monument.

[12] Arlington Nat'l Cemetery, *The Tomb of the Unknown Soldier*, http://www.arlingtoncemetery.mil/Explore/Tomb-of-the-Unknown-Soldier.

relief pictures of Moses carrying the Ten Commandments, and a woman and girl praying before a Celtic cross.[13]

The pattern repeated for many of the veterans memorials built after World War II. In Coal City, West Virginia, where one member of the community died every five days fighting in the war, the veterans memorial reads, "By the grace of God some returned to a grateful nation"; "Let all who pass this way praise God for the valiant service they have freely given to our nation and to mankind."[14] One hundred sixty miles away in Elkins, West Virginia, the county courthouse's memorial strikes a similarly solemn tone: "O God, we trust in thee: Let us not be ashamed in this solemn hour of human history. Increase our abiding faith in the deep and holy foundations which our forefathers laid. May we honor those who died in this war by building on the foundation of thy abiding peace."[15]

World War II memorials are also often poignant examples of imagery on a monument assuming

---

[13] Indiana.gov, *Indiana War Memorial, Veterans Memorial Plaza*, https://www.in.gov/iwm/2330.htm; Indiana.gov, *Indiana War Memorial, Obelisk Fountain*, https://www.in.gov/iwm/2359.htm.

[14] History of Beckley and Raleigh County, *Views of the Raleigh County Veterans Memorial*, http://jeff560.tripod.com/veterans.html.

[15] The Historical Marker Database, *Randolph County Veterans Memorial*, http://www.hmdb.org/marker.asp?marker=33562.

historical meaning beyond its religious origin. Take, for example, the large Star of David monument in Columbia, South Carolina, which is dedicated to the victims and liberators of the Holocaust's concentration camps.[16] Situated among six other large monuments, the very shape of this veterans and Holocaust memorial is a key symbol of Judaism, and it is engraved with Hebrew script and the word "REMEMBER."[17]

The aesthetics of many modern veterans memorials are no different. In Blooming Grove, Texas, for example, a memorial to soldiers who fought in the Korean and Vietnam wars quotes the Old Testament Book of Ecclesiastes: "Rejoice, O Young Men, in Thy Youth."[18] In Wentzville, Missouri, a granite Vietnam memorial repeats the words "[w]hither thou goest I will go" from the Book of Ruth.[19] In Harpers Ferry, West Virginia, a veterans memorial dedicated in 1993 is engraved, "May God Bless America."[20] And the Honolulu Memorial at the

---

[16] Columbia, South Carolina "A to Z", *Memorial Park*, http://www.columbiasouthcarolina.com/memorialpark.htm.

[17] *Id.*

[18] Community Information Portal, *Blooming Grove City Park & War Memorial*, http://bloominggrovetx.com/wp-content/uploads/2014/08/27-IMG_7084.jpg.

[19] Wentzville/Missouri, *Vietnam Veterans Memorial*, http://www.wentzvillemo.org/visitors/vietnam_war_memorial/.

[20] The Historical Marker Project, *Harpers Ferry Bolivar Veterans Memorial*, http://www.historicalmarkerproject.com/markers/HM1CC5_harpers-ferry-bolivar-veterans-memorial_Bolivar-WV.html.

National Memorial Cemetery—built in 1963 to honor soldiers who died in World War II, Korea, and Vietnam—includes a prominent dedication stone at the base of its grand staircase reading, "In these gardens are recorded the names of Americans who gave their lives in the service of their country and whose Earthly resting place is known only to God."[21]

B. Of the many religious images found on our nation's war memorials, crosses are among those most frequently used, particularly to honor combat veterans and those killed in action. Indeed, even on official military insignia and medals, crosses have long been a mark of both bravery and death: a cross denotes heroism on, for example, the Army's Distinguished Service Cross, the Navy Cross, the Air Force Cross, and the Distinguished Flying Cross. 10 U.S.C. §§ 3742; 6242; 8742; 3749.

On public monuments, using a cross to commemorate fallen soldiers dates at least to the Civil War. No fewer than 114 Civil War monuments across America feature a cross of some kind. *Trunk*, 660 F.3d at 1100 (Bea, J., dissenting from denial of rehearing). A 12-foot tall cross, for example, can be found along the trail of the Chickamauga Battlefield in Georgia, dedicated to the memory of a single messenger who fell while delivering a message between Union

---

[21] American Battle Monuments Comm'n, *Honolulu Memorial*, https://www.abmc.gov/cemeteries-memorials/americas/honolulu-memorial.

generals.[22] Then there is the Gettysburg battlefield itself, which is home to the Irish Brigade Monument—comprised of a tall stone Celtic cross.[23]

Use of a cross on war memorials expanded significantly in the wake of World War I. At its time, the war was the most deadly international war in American history.[24] And unlike in modern conflicts and wars, the vast majority of the tens of thousands of American soldiers who died overseas were not brought home, but were laid to rest in Europe's battlefields.[25] Their deaths were frequently marked with crosses, *see Salazar v. Buono*, 559 U.S. 700, 721 (2010), and the high number of casualties often resulted in a visual sea of cross markers across the landscape.[26]

---

[22] Waymarking.com, *Chickamauga National Military Park, Lieutenant George W. Landrum Monument* , http://www.waymarking.com/waymarks/WMDRWM_Lieutenant_George_W_Landrum_Monument_Chickamauga_National_Military_Park.

[23] Nat'l Park Serv., *Park Scenes at Gettysburg, The Irish Birgade Monument at Gettysburg*, https://www.nps.gov/ner/photosmultimedia/photogallery.htm?id=C795B0CC-155D-451F-67B745EEEA69A02E.

[24] U.S. Dep't of Veterans Affairs, *America's Wars*, https://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf.

[25] *See* Ben Rappaport, *How Many American Troops Are Buried In Foreign Lands?*, NBCNews.com (May 30, 2016), https://www.nbcnews.com/news/us-news/how-many-american-troops-are-buried-foreign-lands-n580951.

[26] *See, e.g.*, Remembering the Fallen, *Flanders Field American Cemetery*, https://www.ww1cemeteries.com/ flanders-field-american-cemetery.html.

Many of these battlefields-turned-cemeteries remain today. For example, the United States currently maintains over two dozen cemeteries overseas, nearly all of which contain a singular symbol: rows upon rows of Latin crosses.[27] John McCrae's poem *In Flanders Fields* reflects the way these images seeped into the public's consciousness: "In Flanders Fields the poppies blow, between the crosses row on row." Even now, an American-built chapel stands in the Flanders Field cemetery, adorned with biblical quotations and other religious themes.[28] The cemetery itself is comprised of white Latin crosses for all fallen soldiers, whether known to be Christian or not (except those known to be Jewish, whose graves are marked by a Star of David), and each unknown grave is marked with a cross and the inscription, "Here Rests in Honored Glory an American Soldier Known But to God."[29]

Taking the lead from these somber seas of crosses, families and communities affected by World War I also erected cross monuments to memorialize their fallen.[30] This ethos came stateside after the war, and

---

[27] *See* American Battle Monuments Comm'n, *World War I*, https://www.abmc.gov/cemeteries-memorials.

[28] *See* American Battle Monuments Comm'n, *Commemorative Sites Booklet* at 3 (Feb. 2018), available at https://www.abmc.gov/sites/default/files/publications/EN_997_020_ABMC-Commemorative-Sites-Booklet-MAR2018_508.pdf.

[29] *Id.* at 15.

[30] John Ruler & Emma Thomson, WORLD WAR I BATTLEFIELDS: A TRAVEL GUIDE TO THE WESTERN FRONT 104 (2d

is reflected in the many public cross displays that remember World War I's dead. *See Salazar*, 559 U.S. at 721 (plurality op.) (explaining that "one Latin cross" on American soil "evokes far more than religion," but also memory of the "thousands of small crosses in foreign fields marking the graves of Americans who fell in battles"). For instance, Arlington National Cemetery contains two cross memorials commemorating World War I soldiers: the 13-foot high Argonne Cross, built by the American Women's Legion in memory of the soldiers who died at Argonne,[31] and the 24-foot high Canadian Cross of Sacrifice, donated by the Canadian government in memory of American soldiers who joined the Canadian army before America entered the war.[32]

Many similar World War I cross memorials stand throughout the county. Indeed, the Bladensburg veterans memorial at issue here is one of at least four memorial crosses built after World War I in Maryland

---

ed. 2018) ("orderly rows of 15,000 crosses" remember the lives of German and English soldiers killed at Verdun); Ossuaire De Douaumont, *Galerier photos*, http://www.verdun-douaumont.com/?lang=en; *see also* American Battle Monuments Comm'n, *Meuse-Argonne American Cemetery*, https://www.abmc.gov/cemeteries-memorials/europe/meuse-argonne-american-cemetery.

[31] Arlington Nat'l Cemetery, *Argonne Cross Memorial*, http://arlingtoncemetery.net/argonne-cross.htm.

[32] *See* Arlington Nat'l Cemetery, *Canadian Cross of Sacrifice*, http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Canadian-Cross; Arlington Nat'l Cemetery, *The Canadian Cross Of Sacrifice At Arlington National Cemetery*, http://arlingtoncemetery.net/canadian-cross.htm.

alone. All four were built at crossroads, "so that all who pass may be reminded of the patriotic and devoted service of our glorious dead."[33] Two of the other crosses are in Baltimore—one a six-foot-tall cross near the Johns Hopkins Hospital "[d]edicated to the glory of God and in reverent memory of the men and women of this community who served their county in all wars,"[34] and the other a Victory Cross.[35] The final World War I-era Maryland cross memorial is in Towson, where the citizens erected a granite wayside cross.[36]

Moving beyond Maryland, a 12-foot granite Celtic cross was erected at Cypress Hill National Cemetery in Brooklyn in remembrance of 25 French sailors who died while serving in American waters.[37] Also in New York, World War I chaplain-soldier Father Francis

---

[33] Maryland Historical Trust Inventory, TOWSON WAYSIDE CROSS (Feb. 1997).

[34] Waymarking.com, *Cross Memorial*, http://www.waymarking.com/gallery/image.aspx?f=1&guid=16a0ae69-ce334bdd-8da6-fa58a0385038. Although this memorial is undated, it appears to date to this era.

[35] Maryland Department of Planning, List of Maryland World War I Military Monuments, available at https://mht.maryland.gov/documents/PDF/monuments/MMM-Inventory-WWI.pdf.

[36] *Id.*

[37] U.S. Dep't of Veteran Affairs, *National Cemetery Administration, Cypress Hills National Cemetery*, http://www.cem.va.gov/cems/nchp/cypresshills.asp; Naval-History.Net, *French Navy, World War I*, http://www.naval-history.net/WW1NavyFrenchNYDeaths.htm.

Duffy is honored by a bronze monument in his likeness—holding his Bible, dressed in military garb, and standing before a 17-foot tall Celtic cross.[38] Similarly, the people of Augusta, Georgia built a stone cross on a median between two streets to remember Georgia's World War I soldiers.[39] A large stone Celtic cross stands outside Philadelphia "in loving memory of the men of Chestnut Hill and Mt. Airy who died in the World War, France, 1918."[40] In 1934, the Veterans of Foreign Wars erected a Latin cross mounted on a rock in the Mojave Desert to commemorate those who died in the war. *Salazar*, 559 U.S. at 706. And in Waterbury, Connecticut, the Great War For Democracy Memorial was originally a close replica of the wooden crosses clustered by battlefield trenches. Modified over the years, this memorial now includes three wooden crosses dedicated to three local soldiers who died in the war,

---

[38] New York City Dep't of Parks & Recreation, *Father Duffy Square*, http://www.nycgovparks.org/parks/father-duffy-square/monuments/416.

[39] The Nat'l War Memorial Registry, *Troop K Georgia Cavalry War Memorial Front*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/georgia/troop-k-georgia-cavalry-war-memorial-front.

[40] Philadelphia Pub. Art, *Chestnut Hill and Mt. Airy World War I Memorial*, http://www.philart.net/art/Chestnut_Hill_and_Mt_Airy_World_War_I_Memorial/515.html; The Nat'l War Memorial Registry, *Chestnut Hill and Mt. Airy World War I Memorial Dedication Stone*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-searchpennsylvania/chestnut-hill-and-mt-airy-world-war-memorial-dedication-stone.

Star of David plaques remembering Jewish soldiers,[41] a large central illustration of a soldier kneeling before a cross, and an inscription from Ecclesiastes.[42]

After World War I, crosses continued to proliferate as the symbol of fallen soldiers on monuments to the nation's veterans. At Chaplain's Hill in Arlington National Cemetery, a 1989 monument dedicated to Catholic chaplains slain in many wars bears a bronze crucifix and a plaque entreating, "May God Grant Peace To Them And To The Nation They Served So Well."[43] Other examples abound. The people of Coos Bay, Oregon raised a 5 1/2-foot tall cross to honor "the men who gave their lives" in the Vietnam War,[44] and in La Mesa,

---

[41] Historical Marker Project, *Great War For Democracy Memorial*, http://www.historicalmarkerproject.com/markers/HMO2O_great-war-for-democracy-memorial_Waterbury-CT.html; The Nat'l War Memorial Registry, *Great War For Democracy Memorial Main Panel*, http://www.nationalwarmemorialregistry.org/memorials/great-war-for-democracy-memorial-main-panel/.

[42] George L. Mosse, FALLEN SOLDIERS: RESHAPING THE MEMORY OF THE WORLD WARS 83 (1990).

[43] Arlington Nat'l Cemetery, *Chaplains Hill & Monuments*, http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Chaplains-Hill (last visited July 27, 2018); Arlington Nat'l Cemetery, *The Catholic Chaplain's Monument at Arlington National Cemetery*, http://arlingtoncemetery.net/catholic.htm.

[44] Lori Tobias, *Coos Bay Vietnam memorial stirs up strong feelings and a bombing over Christian symbolism*, The Oregonian (Aug. 31, 2013), available at http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/08/coos_bay_vietnam_memorial_stir.html.

California, the American Legion placed a cross at the top of a similar Vietnam War memorial.[45] The cemetery of the Town of Langdale, Wisconsin is home to a plain wooden cross in memory of the dead of all wars.[46] On the grounds of a Mount Vernon, Illinois county courthouse, a large granite pillar etched with a prominent cross gives tribute to the veterans of eight wars.[47] A cross stands at the zenith of the Unknown Soldiers Monument at Arizona's Prescott National Cemetery.[48] In San Diego, the Mt. Soledad Veterans Memorial Cross honors all "veterans of the United States Armed Forces."[49] And in Aurora, Missouri, a stone cross in Maple Park Cemetery reminds visitors of "those who paid the ultimate sacrifice."[50]

---

[45] Vietnam War Memorial, La Mesa, CA, http://www.waymarking.com/waymarks/WM8WQX_Vietnam_War_Memorial_La_Mesa_CA.

[46] The Nat'l War Memorial Registry, *American Legion Post 524 War Memorial Cross*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/wisconsin/american-legion-post-524-war-memorial-cross.

[47] Waymarking.com, *Jefferson County Veterans Memorial ~ Mount Vernon, IL*, http://www.waymarking.com/waymarks/.

[48] U.S. Dep't of Veteran Affairs, *National Cemetery Administration, Prescott National Cemetery*, http://www.cem.va.gov/cems/nchp/prescott.asp.

[49] Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3346 (2004).

[50] The Nat'l War Memorial Registry, *Maple Park Cemetery War Memorial Cross*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/missouri/maple-park-cemetery-war-memorial-cross.

Borrowing imagery evocative of the World Wars, many towns have constructed fields of crosses to honor the dead. In Mount Morris, New York, for example, a field of small crosses is patterned after those found at Omaha Beach in Normandy.[51] In Highland, Kansas, a local cemetery marks similar rows of crosses with the names of individual soldiers.[52] In Constantine, Michigan, the township cemetery features a field of crosses, each cross dedicated to a different war.[53] In Sunbury, Ohio, a recent expanse of crosses commemorates soldiers lost to the War on Terrorism.[54]

Bronze battle cross memorials—yet another symbol from World War I—are also common in war memorials across the country. A rifle and helmet propped up by a pair of boots in the shape of a cross, this symbol began in World War I as an ad hoc way to

---

[51] The Nat'l War Memorial Registry, *Mount Morris Field Of Crosses*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/new-york/mount-morris-field-of-crosses.

[52] The Nat'l War Memorial Registry, *Highland Cemetery Veterans Memorial Field Of Crosses*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/kansas/highland-cemetery-veterans-memorial-field-of-crosses.

[53] The Nat'l War Memorial Registry, *Constantine Field Of Crosses War Memorial*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/michigan/constantine-field-of-crosses-war-memorial.

[54] The Nat'l War Memorial Registry, *Ohio Fallen Heroes Field of Crosses Memorial*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/ohio/ohio-fallen-heroes-field-of-crosses-memorial.

mark where a soldier fell in battle.[55] Today, battle crosses can be found in more than 50 veterans memorials nationwide,[56] including the National D-Day Memorial in Bedford, Virginia;[57] in Ansted, West Virginia;[58] and Lewisville, North Carolina.[59] Often, these memorials also depict soldiers kneeling before the battle cross, such as at the memorials in Del City, Oklahoma and Priceville, Alabama.[60]

* * *

The World War I memorial at the heart of this case is not unique. Like countless memorials built

---

[55] Kathleen Golden, *The Battle Cross*, THE SMITHSONIAN (May 21, 2015), http://americanhistory.si.edu/blog/battlefield-cross.

[56] *See* The Nat'l War Memorial Registry, http://www.nationalwarmemorialregistry.org/joomla/war-memorial-registrysearch/advanced-search?cat_id=0&view=advsearch (select "battlefield crosses" in "type of memorial").

[57] The Nat'l D-Day Memorial, https://www.dday.org/introduction.html.

[58] The Nat'l War Memorial Registry, *New Haven Veterans' Memorial Battlefield Cross*, http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/west-virginia/new-haven-veterans-memorial-battlefield-cross.

[59] Historical Marker Database, *Battle Cross*, https://www.hmdb.org/marker.asp?marker=55908.

[60] Waymarking.com, *Fallen Soldier Battle Cross - Del City, OK*, http://www.waymarking.com/waymarks/WMBTCN_Fallen_Soldier_Battle_Cross_Del_City_OK; Al Whitaker, *Priceville Honors Veterans, Dedicates New Memorial Park*, (November 12, 2012), *available at* https://whnt.com/2012/11/11/priceville-honors-veterans-dedicates-new-memorial-park/.

across the States and throughout our history, the monument at Bladensburg uses religious imagery as part of its vital civic purpose of remembering and honoring those who died in our nation's service. The decision below calls for its destruction. This Court should grant review to make clear that these memorials are fully consistent with the First Amendment, and the best of our historical tradition.

CONCLUSION

The petitions for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Morrisey
Attorney General

Lindsay S. See
Solicitor General
Counsel of Record

Gordon L. Mowen, II
Assistant Attorney General

OFFICE OF THE WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

Counsel for Amicus Curiae
State of West Virginia

July 27, 2018

Additional Counsel

Steve Marshall
Attorney General
State of Alabama
501 Washington Ave
Montgomery, AL 36104

Mark Brnovich
Attorney General
State of Arizona
2005 N. Central Ave
Phoenix, AZ 85004-2926

Leslie Rutledge
Attorney General
State of Arkansas
323 Center St, Ste 200
Little Rock, AR 72201

Cynthia H. Coffman
Attorney General
State of Colorado
1300 Broadway 10th Fl
Denver, CO 80203

Pamela Jo Bondi
Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399

Christopher M. Carr
Attorney General
State of Georgia
40 Capitol Square, SW
Atlanta, GA 30334

Lawrence G. Wasden
Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

Curtis T. Hill, Jr.
Attorney General
State of Indiana
200 W. Washington Street, 5th Floor
Indianapolis, IN 46204

Derek Schmidt
Attorney General
State of Kansas
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

Andy Beshear
Attorney General
Commonwealth of Kentucky
700 Capitol Ave, Ste 118

Frankfort, KY 40601
Jeffrey Martin Landry
Attorney General
State of Louisiana
1885 N Third Street
PO Box 94005
Baton Rouge, LA
70804

Bill Schuette
Attorney General
State of Michigan
525 W. Ottawa Street
PO Box 30212
Lansing, MI 48909

Jim Hood
Attorney General
State of Mississippi
550 High St, Ste 1200
Jackson, MS 39201

Josh Hawley
Attorney General
State of Missouri
207 W. High Street
PO Box 899
Jefferson City, MO
65102

Tim Fox
Attorney General
State of Montana
215 N. Sanders Street
Helena, MT 59601
Doug Peterson
Attorney General
State of Nebraska
2115 State Capitol
PO Box 98920
Lincoln, NE 68509

Adam Paul Laxalt
Attorney General
State of Nevada
100 N. Carson Street
Carson City, NV 89701

Wayne Stenehjem
Attorney General
State of North Dakota
600 E. Boulevard
Avenue, Dept. 125
Bismarck, ND 58505

Mike DeWine
Attorney General
State of Ohio
30 E. Broad St., 14th Fl
Columbus, OH 43215

Mike Hunter
Attorney General
State of Oklahoma
313 NE 21st Street
Oklahoma City, OK
73105

Peter F. Kilmartin
Attorney General
State of Rhode Island
150 S. Main Street
Providence, RI 02903

Marty J. Jackley
Attorney General
State of South Dakota
1302 E Hwy 14
Pierre, SD 57501

Alan Wilson
Attorney General
State of South Carolina
1000 Assembly Street
Room 519
PO Box 11549
Columbia, SC 29211

Herbert H. Slatery III
Attorney General
State of Tennessee
PO Box 20207
Nashville, TN 37202-0207

Ken Paxton
Attorney General
State of Texas
300 W. 15th Street
PO Box 12548
Austin, TX 78711-2548

Sean Reyes
Attorney General
State of Utah
350 N. State St
Ste 230
PO Box 142320
Salt Lake City, UT 84114-2320

Mark R. Herring
Attorney General
Commonwealth of Virginia
202 N. Ninth Street
Richmond, VA 23219

Matt Bevin
Governor
Commonwealth of Kentucky
700 Capital Avenue, Suite 101
Frankfort, KY 40601